



March 21, 2014

Kent L. Jones, PE
Utah State Engineer
P.O. Box 146300
Salt Lake City, UT 84114

RE: *Apportionment of Water 2014 Fall Distribution
Barton Ditch, Aberdare Bench Canal Company,
Furnace Ditch Co. and South Ditch Co.*

Dear Mr. Jones:

As you know, I represent Barton Ditch, Aberdare Bench Canal Company, Furnace Ditch Co. and South Ditch Co. ("Lower Beaver Users") regarding recent distribution orders issued by the Division of Water Rights for the 2013 and 2014 years. I am informed by Bruce Brown that the Division of Water Rights has made certain adverse decisions to my client affecting the distribution of water in the lower Beaver River; more particularly, the allocation of ditch loss attributable to my clients below their points of diversion and refusal to reimburse my client for additional water received by Rocky Ford Irrigation Company. It is my clients' understanding that the Division of Water Rights has determined that ditch loss between my clients' last point of diversion and the Minersville Reservoir's measuring station will be allocated proportionately between Rocky Ford Irrigation Company and the Lower Beaver Users.

If such is the case, such allocation appears legally unjustified. In researching this issue, I cannot find any prior legal precedence or statutory authority under U.C.A. §73-1, *et. seq.* authorizing such proposed ditch loss for downstream users. The fact that any portion of the water is diminished through evaporation or seepage and never reaches the Minersville Reservoir is inconsequential to my clients. These water companies are not responsible for ditch loss below each companies' respective point of diversion, and any attempt by the Division of Water Rights to debit said water loss, as a result of it being left in the Beaver River's natural stream bed, is not appropriate.

In reviewing statutory authority of the Division of Water Rights, I can find only one statute which contemplates ditch loss. This is located in U.C.A. §73-1-7(3), which permits such allocation when a party has enlarged or otherwise modified a ditch. This statute is inapplicable as my clients have never modified the Beaver River. Moreover, in reviewing this matter with several other attorneys, to the best of our knowledge, such suggested application of loss has never been imposed by your office. If we are incorrect, then please so advise.

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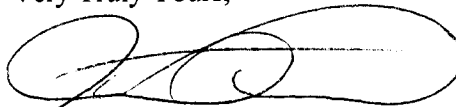
Finally, if evaporation and seepage are to be assessed to the Lower Beaver Users, then my clients are requesting that such allocation and evaporation being imposed upon all users allocated water under the Beaver River Decree. The Lower Beaver Users should not be the only entities required to absorb ditch loss supposedly incurred by Rocky Ford Irrigation Company as it is well known that the gravelly river bottom results in seepage along the entire river. In addition thereto, request is made that the Lower Beaver Users obtain credit for any springs or inflow of water which results from the river seepage which comes up in springs under Minersville Reservoir.

While the foregoing request might appear facially absurd, it is no more unreasonable than Mr. Manning's decision to impose evaporation and seepage loss for the benefit of downstream users. Such decision encourages waste and lack of beneficial use. If Rocky Ford is concerned about seepage or evaporation, then it is welcome to divert the water through a pipeline below the last point of diversion to avoid such losses. If the Division of Water Rights are truly concerned about loss of water by seepage or evaporation, then it should use its powers under U.C.A. §73-5-9 to impose upon Rocky Ford the obligation to construct a cement base or pipeline to prevent such loss when flows are at a minimum; or the entire problem could be solved, (and was solved), by implementing the 1967 Agreement terms summarily disregarded by Mr. Manning.

Finally, my clients are requesting credit in the 2014 season for any overage received by Rocky Ford Irrigation Company at the end of the 2013 season. Mr. Manning has determined that because my clients did not take the water at the end of the year, they have lost that water opportunity to the benefit of Rocky Ford. However, as Mr. Manning should recall, the water commissioner notified and required my clients to stop using water prior to the end of the 2013 water season. He did so at your office's direction and shut the gates so that Rocky Ford could receive its full share of the water. However, after Rocky Ford had received its full share, the commissioner was never directed to notify my clients to retake the water. If this office is going to assume responsibility for directing the distribution of water in accordance with the Decree, then it should do so competently and fairly. They find it curious that Mr. Manning continually favors Rocky Ford. Please review this issue with Mr. Manning and respond to my clients in the next 14 days.

Please feel free to contact me with any further questions, comments or concerns that you have. Your prompt response is appreciated.

Very Truly Yours,



JUSTIN W. WAYMENT
Attorney at Law

JWW:dbm
enclosures